

To the maximum extent practical, the parties should identify these regulations in the AFA.

**§ 1000.221 Can the Secretary grant a waiver of regulations to a Tribe/Consortium?**

Yes, a Tribe/Consortium may ask the Secretary to grant a waiver of some or all Department of the Interior regulation(s) applicable to a program, in whole or in part, operated by a Tribe/Consortium under an AFA.

**§ 1000.222 How does a Tribe/Consortium obtain a waiver?**

To obtain a waiver, the Tribe/Consortium must:

- (a) Submit a written request from the designated Tribal official to the Director for BIA programs or the appropriate bureau/office director for non-BIA programs;
- (b) Identify the regulation to be waived and the reasons for the request;
- (c) Identify the programs to which the waiver would apply;
- (d) Identify what provisions, if any, would be substituted in the AFA for the regulation to be waived; and
- (e) When applicable, identify the effect of the waiver on any trust programs or resources.

**§ 1000.223 When can a Tribe/Consortium request a waiver of a regulation?**

A Tribe/Consortium may request a waiver of a regulation:

- (a) As part of the negotiation process; or
- (b) After an AFA has been executed.

**§ 1000.224 How can a Tribe/Consortium expedite the review of a regulation waiver request?**

A Tribe/Consortium may request a meeting or other informal discussion with the appropriate bureau officials before submitting a waiver request.

- (a) To set up a meeting, the Tribe/Consortium should contact:
  - (1) For BIA programs, the Director, OSG; or
  - (2) For non-BIA programs, the designated representative of the bureau.
- (b) The meeting or discussion is intended to provide:
  - (1) A clear understanding of the nature of the request;

- (2) Necessary background and information; and

- (3) An opportunity for the bureau to offer appropriate technical assistance.

**§ 1000.225 Are meetings or discussions mandatory?**

No, a meeting with the bureau officials is not necessary to submit a waiver request.

**§ 1000.226 On what basis may the Secretary deny a waiver request?**

The Secretary may deny a waiver request if:

- (a) For a Title-I-eligible program, the requested waiver is prohibited by Federal law; or
- (b) For a non-Title-I-eligible program, the requested waiver is:
  - (1) Prohibited by Federal law; or
  - (2) Inconsistent with the express provisions of the AFA.

**§ 1000.227 What happens if the Secretary denies the waiver request?**

If the Secretary denies a waiver request, the Secretary issues a written decision stating:

- (a) The basis for the decision;
- (b) The decision is final for the Department; and
- (c) The Tribe/Consortium may request reconsideration of the denial.

**§ 1000.228 What are examples of waivers prohibited by law?**

Examples of when a waiver is prohibited by Federal law include:

- (a) When the effect would be to waive or eliminate express statutory requirements;
- (b) When a statute authorizes civil and criminal penalties;
- (c) When it would result in a failure to ensure that proper health and safety standards are included in an AFA (section 403(e)(2));
- (d) When it would result in a reduction of the level of trust services that would have been provided by the Secretary to individual Indians (section 403(g)(4));
- (e) When it would limit or reduce the services, contracts, or funds to any other Indian Tribe or Tribal organization (section 406(a));